

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LAUREN ADELE OLIVER,

Plaintiff,
vs.

CIVIL NO. 1:20-cv-00237-KK-SCY

MEOW WOLF, INC., ET AL.,

Defendant.

MOTION TO PERMIT SUPPLEMENTAL EXPERT WITNESS DISCLOSURE

COMES NOW Plaintiff Lauren Oliver (“Oliver” or “Plaintiff”), and hereby moves this Court to permit Plaintiff to disclose expert Frederick R. Kuhns in this case. Opposition to this motion is assumed based on prior interactions between counsel. As grounds for her motion, Plaintiff states:

- a. Plaintiff filed a motion to compel on February 22, 2021, which motion remains pending. (D.E. 72).
- b. As outlined in Plaintiff’s motion to compel, Plaintiff believes documents and information currently held by Defendants, which are subject to disclosure but which have not yet been produced, are critical to the completion of analysis by her existing experts, and her ability to properly prepare her case for trial. This conclusion is supported in part by Plaintiff’s counsel’s independent discovery during preparation of Oliver’s motion to compel of what Plaintiff now understands to be a “pitch deck” incorporating Oliver’s work. *See* D.E. 78, Exhibit E. It is further supported by witness testimony on April 19, 2021, that the document in question is one of hundreds, if not thousands, of pitch decks.

- c. Though multiple categories of documents and information had not been produced (and were then subject to a motion to compel), Plaintiff made its initial disclosure of experts on March 5, 2021 pursuant to the Scheduling Order entered in this case.
- d. Plaintiff believes documents incorporating her work, including pitch decks, investor materials, and press materials, which are relevant and responsive to existing discovery requests and motions to compel, can be used to determine the value to Defendants that the unauthorized use of Oliver's work represents to their brand and venture as a whole, as well as a reasonable royalty and/or value associated with the use itself. Such valuation is relevant to the calculation of damages under Plaintiff's misrepresentation, unjust enrichment, copyright, and proposed promissory estoppel claims.
- e. Prior to April 19, 2021, because of Defendants' refusal to produce documents responsive to discovery requests regarding company ownership, valuation, investor materials (including those incorporating Plaintiff's work), and press materials (including those incorporating Plaintiff's work), Plaintiff did not have evidence indicating Defendants may have systematically utilized her work to build their brand and the value of their venture.
- f. Opining about how the use of a particular work affects brand and company value requires specialized knowledge, aspects of which is not currently held by Plaintiff's currently-disclosed damages expert, Marianne DeMario. As such, relying upon her to obtain that knowledge in this case would carry an unreasonable cost, if it could be done at all prior to trial.
- g. Expert Frederick R. Kuhns has the requisite expertise, and has agreed to analyze the issues outlined above when and if Defendants provide the information

currently subject to pending motions to compel and discovery requests. Plaintiff's disclosure of Mr. Kuhns is attached hereto as Exhibit A. This disclosure has been served on Defendants' counsel for rebuttal purposes, while this motion relates to his disclosure as an expert for purposes apart from rebuttal. It is Plaintiff's firm position that had Defendants not improperly withheld discoverable materials, Plaintiff would have been in a position to disclose Mr. Kuhns earlier in this case.

- h. Multiple discovery motions remain pending, and the time for disclosure of rebuttal experts has not yet expired.
- i. Under the current scheduling order (which Plaintiff is seeking to extend), it is considerably more than 90 days before trial. *See* Fed. R. Civ. P., Rule 26(a)(2)(D)(i). Defendants will have ample opportunity to assess Mr. Kuhn's opinions, and depose him well before trial in this case. Thus, disclosing Mr. Kuhns now will not prejudice Defendants.

WHEREFORE, Plaintiff respectfully requests the Court enter an Order allowing Plaintiff to disclose Frederick R. Kuhns as an expert in this case pursuant to Fed. R. Civ. P., Rule 26(a)(2)(D).

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Attorneys for Plaintiff Lauren Adele Oliver

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LAUREN ADELE OLIVER,
an individual,

Plaintiff,

v.

Case No. 1:20-CV-00237-KK-SCY

MEOW WOLF, INC., a Delaware
corporation; VINCE KADLUBEK,
an individual and officer; and
DOES 1-50,

Defendants.

PLAINTIFF'S REBUTTAL AND SUPPLEMENTAL EXPERT WITNESS DISCLOSURE

Plaintiff, LAUREN ADELE OLIVER (Plaintiff or “Oliver”), through her attorney, Erickson Arbuthnot (Jesse A. Boyd), pursuant to Fed.R.Civ.P., Rules 26(a)(2)(A), (D), (E); 26(e)(2), gives notice that she may call the following expert witness at trial:

1. Frederick R. Kuhns
11620 Wilshire Blvd.
Suite 900
Los Angeles, CA 90025

Plaintiff discloses the following information regarding this expert witness:

1. Mr. Kuhns has been retained to rebut opinions of Expert Fernando Torres regarding appropriate valuation of Plaintiff's claims based on recently-discovered information, and information subject to pending discovery motions, all of which should have been disclosed by Defendants prior to this stage of the proceedings. In addition, based on recently-discovered information, and information subject to pending discovery motions, Mr. Kuhns is expected to provide opinions about the value and benefit Defendants realized through their unauthorized use of Plaintiff's work after its

installation at House of Eternal Return. Curriculum Vitae for Mr. Kuhns is attached hereto as Exhibit A.

Plaintiff reserves the right to supplement the information and reports provided based on evidence adduced during discovery, and add additional expert witnesses in response to Defendants' disclosures.

Dated: May 13, 2021

ERICKSEN ARBUTHNOT

By: */s/ Jesse A. Boyd*
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EXHIBIT A

FRED KUHNS, CMA, MBA

•11620 Wilshire Blvd, Suite 900•Los Angeles, CA 90025•310-481-6705•fkuhns@frkconsulting.com•

FRK Consulting, Los Angeles, California
Principal

**2007 – present &
2005 – 2006**

Provide finance, accounting and valuation services for litigation and transactions. Examples include:

- Analyzed economic damages in a trademark dispute involving an international fashion company and a domestic start-up. Studied manufacturing, shipping and distribution costs to determine profitability related to alleged infringing goods.
- Measured lost profits for a food and supplements company prevented from expanding due to breach of contract in a real estate transaction. Testified at arbitration regarding projected revenue, increased costs and outsourcing limitations.
- Calculated economic damages in copyright litigation on behalf of a fashion jewelry company impacted by infringing sales. Quantified lost profits and provided a Rule 26 report filed in federal court.
- Valued the common stock of a closely held business software company. Compared historical and projected performance to industry benchmarks and ratios. Results were used to price stock options in connection with IRC Section 409A.
- Valued oil and gas production patents for a Fortune 100 industrial company. Worked with technical experts to determine optimal areas of application. Analyzed relevant markets, developed discounted cash flow models and calculated values for multiple scenarios.

Ocean Tomo LLC, Los Angeles and San Francisco, California
Director, Expert Services

2006 – 2007

Managed project teams providing valuation and dispute resolution services. Examples include:

- Calculated economic damages in a patent dispute involving car alarm technology. Assembled sales history data to determine royalty base and prepared expert reports.
- Analyzed \$4.8 billion in sales of recombinant technology drugs on behalf of an international pharmaceutical company involved in an infringement matter. Developed profitability and value measures for different products and regions.
- Reviewed patent infringement claims for a videoconferencing company with sales over \$250 million. Provided attorneys with financial analyses to refute plaintiff's damage assertions.

PricewaterhouseCoopers LLP, Los Angeles, California
Director, Financial Advisory Services (1999-2005); Manager (1997-1999)

1997 – 2005

Supervised consultants assisting clients with complex business disputes. Examples include:

- Testified as an expert witness in California state court regarding the value of goodwill for an oil refinery shut down by eminent domain. Used internal accounting reports to compare financial performance with industry benchmarks.
- Calculated product line profitability and royalties for a leading maker of integrated circuit design equipment involved in a patent infringement lawsuit. Created financial statements showing revenues and expenses for each type of product.
- Assisted a major aerospace company seeking \$1 billion in purchase price adjustments following acquisition of a communications satellite business. Investigated issues related to R&D cost treatment, financial impact of contract delays and spacecraft failure projections. Participated in mediation leading to a successful settlement.

Peterson Consulting LLP, Los Angeles, California **1986-1996**

Principal (1996); Executive Consultant (1989-1996); Senior (1988-1989); Associate (1986-1987)

- Assisted clients and counsel in numerous litigation and valuation matters.
- Valued a clothing trademark and developed financial projections to support applications for bank loans related to new product lines.
- Testified as an expert witness regarding business interruption losses suffered by a professional services firm forced to shut down after a fire.

Hughes Aircraft, Space & Communications Group, El Segundo, California **1983-1985**

Instructional Designer

- Designed and delivered training on cost accounting and scheduling systems.

Rockwell International, North American Aircraft, El Segundo, California **1981-1983**

Statistical Analyst

- Tracked performance against budgets for Operations departments.
- Developed training programs for federal cost and schedule compliance.

Teaching and Training:

- Instructor, UCLA Extension – Department of Business, Management & Legal Programs, Los Angeles, California – 2012 to present. Courses taught include Managerial Finance, Accounting for Non-Accountants and the Certified Management Accountant (CMA) Exam Review.
- Visiting Professor, Keller Graduate School of Management at DeVry University, Sherman Oaks, California - 2010 to 2013. Courses taught include Managerial Accounting and Corporate Finance.

Education and Certifications:

- Master of Business Administration – Finance and Accounting, UCLA (Anderson School) - 1986
- Bachelor's Degree with high honors – History and Science, Harvard University - 1977
- Certified Management Accountant (CMA); 1988 – present (certificate number 113680)

Professional Associations:

- Institute of Management Accountants
- American Society of Appraisers

Presentations:

- *What's it Really Worth: Business Valuation Explained* – session presented at the Institute of Management Accountants (IMA) annual conference - 2019
- *Intellectual Property Valuation Issues* – seminar presented to the Licensing Executives Society, Los Angeles and Orange County - 2010
- *Damages in Copyright, Trademark & Trade Secret Cases* – seminar presented to law firms, 2003-2004

Community and Charitable:

- President's Advisory Council and Board of Trustees, Santa Monica Family YMCA

CERTIFICATE OF SERVICE

I, Jesse A. Boyd, hereby certify that I caused a true and correct copy of the foregoing Certificate of Service for MOTION TO PERMIT SUPPLEMENTAL EXPERT WITNESS DISCLOSURE to be filed through the Court's CM/ECF system which caused all parties and counsel entitled to received notice to be served electronically as more fully described on the Notice of Electronic Filing.

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Respectfully submitted,

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